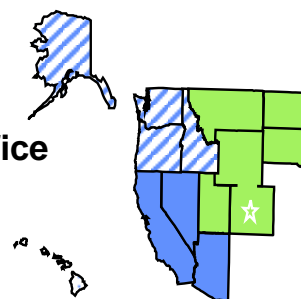




**U.S. Army Environmental Center
Western Regional Environmental Office**

REGIONAL ALERT



Environmental Legislative Actions, Proposed Rules and Judicial Decisions

This publication provides current regional and state environmental developments, with special emphasis on statutory, regulatory and judicial actions. Its purpose is to provide timely and easy access to information that will help you keep abreast of important changes affecting U.S. Army and DoD activities and operations. If you have suggestions or comments, please contact the Environmental Specialist at the Western Regional Environmental Office, ATTN: SFIM-AEC-WR (Env Spec), Building 111, Commerce City, CO 80022-1748, commercial (303) 289-0260, DSN: 749-2260, FAX: (303) 289-0125.

Ninth Circuit Court of Appeals Affirms Citizen's Right to Sue Over Inadequate Military Base Cleanups

A three-judge panel in a recent United States Court of Appeals for the Ninth Circuit¹ court case held that the right to challenge hazardous waste cleanups at federal facilities is broader than the right to challenge those cleanups at private sites.

This is the first federal appellate court opinion to address this issue. Previously, it had been understood that CERCLA Section 113(h)'s bar to litigation challenging cleanup decisions prior to implementation of a remedy applies equally to federal and private sites. However, in *Ft. Ord Toxics Project v. California EPA*, 1999 U.S. App. LEXIS 20951 (Sept. 2, 1999)², the court held that such legal challenges are permissible when the cleanup occurs on a federal site.

Expect the United States to request that all the judges on the Ninth Circuit (not just the three who agreed on the *Ft. Ord* opinion) examine the issue and prepare an opinion. Meanwhile, the case has extremely significant ramifications for all federal owners of CERCLA sites because it allows legal challenges prior to implementation of the remedy³. Thus, there could be increased cost and delay in cleaning the sites, which is exactly what Congress sought to avoid when it drafted the section 113(h) jurisdictional bar to such litigation.

For copies of the *Ft. Ord* opinion or additional information, contact Diane M. Connolly, Regional Counsel, WREO, (303) 289-0459.

¹ The Ninth Circuit includes all the federal courts in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam and the Northern Mariana Islands.

² The United States Army was also sued in the case.

³ Note that the *Ft. Ord* opinion applies only to remedial actions, not to removal actions where the jurisdictional bar still applies.